

TABLE OF CONTENTS

I. Introduction and Background 1

A. Identification of Witness..... 1

B. Purpose of Testimony 1

II. Response to Mr. Tolsdorf’s Rebuttal Testimony 1

1 **I. Introduction and Background**

2 **A. Identification of Witness**

3 **Q. Please state your name.**

4 A. Martin G. Fruehe.

5 **Q. Are you the same Martin Fruehe who previously provided rebuttal testimony in this**
6 **proceeding?**

7 A. Yes. My rebuttal testimony is ComEd Exhibit (“Ex.”) 4.0.

8 **B. Purpose of Testimony**

9 **Q. What is the purpose of your surrebuttal testimony?**

10 A. The purpose of my surrebuttal testimony is to respond to the rebuttal testimony of Staff
11 witness Scott Tolsdorf, who continues to recommend that the Illinois Commerce
12 Commission (“Commission”) disallow recovery through Rider EDA – Energy Efficiency
13 and Demand Response Adjustment (“Rider EDA”) of all incentive compensation expense
14 that is related to the incremental employees hired by ComEd to implement its energy
15 efficiency (“EE”) portfolio and whose costs are recovered through Rider EDA.

16 **II. Response to Mr. Tolsdorf’s Rebuttal Testimony**

17 **Q. In general, what is your response to Mr. Tolsdorf’s arguments in his rebuttal**
18 **testimony to disallow all of the incentive compensation costs ComEd incurred**
19 **during Plan Year 2 (“PY2”) related to those employees whose costs are recovered**
20 **through Rider EDA?**

21 A. Mr. Tolsdorf’s opposition to the recovery of PY2 incentive compensation costs depends
22 almost entirely on disregarding, without any justification, the Commission’s approval of

23 indistinguishable incentive compensation costs in the Plan Year 1 reconciliation docket
24 and the Commission's continued approval of incentive compensation costs in ComEd's
25 delivery services rate cases. After basing his direct testimony on the erroneous
26 assumption that a December 2010 Commission order applied retroactively to the August
27 31, 2010 filing in this case, Mr. Tolsdorf largely backs away from this unsupportable
28 position in his rebuttal testimony. In its place, Mr. Tolsdorf attempts, unsuccessfully, to
29 attack these prudent and reasonable incentive compensation costs through undeveloped
30 and ill-formed arguments, none of which provides a basis for disallowing all incentive
31 compensation costs in this docket.

32 As I describe in more detail below, the incentive compensation costs ComEd
33 proposes to recover in this docket are prudent and reasonable by any measure.
34 Specifically, in response to Mr. Tolsdorf's vague and undefined claims that these costs
35 are suddenly inappropriate for recovery through Rider EDA in this docket (or any other
36 docket for that matter), I explain that these costs are:

- 37 ➤ ***Consistent with the Types of Incentive Compensation Costs Recovered in the Plan***
38 ***Year 1 Reconciliation Docket and ComEd's Delivery Services Rate Cases:***
39 Importantly, the incentive compensation costs ComEd seeks recovery of in this
40 docket are not tied to net income or earnings per share.
- 41 ➤ ***Prudent and Reasonable and Already Satisfy the Commission's Order in ICC***
42 ***Docket No. 10-0570:*** Mr. Tolsdorf has not identified any specific imprudent decision
43 or unreasonable costs. Moreover, although the Commission's Order in ICC Docket
44 No. 10-0570 was issued long after ComEd submitted its filing in this docket, the

45 Annual Incentive Program (“AIP”) under which the incentive compensation costs
46 were incurred relates, and is tailored, to energy efficiency.

47 ➤ ***Responsible for Tangible and Substantial Customer Benefits:*** The incremental
48 employees hired to implement the energy efficiency portfolio deliver the energy
49 savings benefits described in Section 8-103(a) of the Public Utilities Act (“Act”).

50 ➤ ***Reflect the Portion of Each Employee’s Total Compensation That Is At Risk:***
51 Contrary to Mr. Tolsdorf’s claim that incentive compensation reflects “extra”
52 compensation, incentive compensation is part of the employee’s total compensation.
53 In other words, if an EE employee fails to achieve his or her individual goals specific
54 to energy efficiency, the employee will not be fully compensated for that particular
55 year – it is truly “pay at risk.”

56 **Q. As an initial matter, has the Commission allowed recovery of AIP or other forms of**
57 **incentive compensation in previous orders?**

58 A. Yes. In fact, the Commission allowed ComEd to recover 100% of its incentive
59 compensation costs in the preceding reconciliation docket for Plan Year 1. *See generally*
60 *Commonwealth Edison Co.*, ICC Docket No. 09-0378, Final Order (Oct. 6, 2010). This
61 is consistent with the Commission’s Order in ICC Docket No. 10-0467, which permitted
62 ComEd to recover all of its AIP costs. In general, the Commission has allowed recovery
63 of AIP as long as it was not related to net income or earnings per share. *See, e.g.*,
64 *Commonwealth Edison Co.*, ICC Docket No. 07-0566, Final Order (Sept. 10, 2008) at 61.
65 Importantly, the incentive compensation costs at issue in the present docket are not
66 related to net income or earnings per share, and Mr. Tolsdorf does not claim otherwise.

67 **Q. What is your response to Mr. Tolsdorf's characterization of your testimony**
68 **regarding the application of the Commission's Order in ICC Docket No. 10-0570?**

69 A. Mr. Tolsdorf entirely ignores the point of my testimony on this issue. I addressed the
70 Commission's Order in ICC Docket No. 10-0570 because Mr. Tolsdorf erroneously
71 claimed that it directly applied to and governed ComEd's filing in this docket, and that
72 ComEd somehow failed to satisfy the Commission's directive in that order. I merely
73 responded that the Commission's Order, which approved ComEd's second energy
74 efficiency and demand response plan, declined to address incentive compensation in that
75 docket and instead directed ComEd to address incentive compensation "in [its] *next*
76 *reconciliation* filing." *Commonwealth Edison Co.*, ICC Docket No. 10-0570, Final Order
77 (Dec. 21, 2010) at 44 ("*2011 – 2013 Plan Order*") (emphasis added). Because the
78 present reconciliation docket was initiated in August 2010 and had been pending nearly
79 four months when the Commission issued this order, I simply observed that the
80 Commission appeared to be addressing ComEd's *next reconciliation filing*, which would
81 be made in August 2011 as required by Rider EDA. Fruehe Reb., ComEd Ex. 4.0, 4:78-
82 5:92.

83 In any event, and most importantly, I noted that "even if the Commission's directive
84 in its *2011 – 2013 Plan Order* retroactively applied in the present docket (and I
85 understand from counsel that it does not), the incentive compensation costs which
86 ComEd requests recovery through Rider EDA clearly relate to energy efficiency."
87 Fruehe Reb., ComEd Ex. 4.0, 5:93-96. Mr. Tolsdorf, however, ignores this testimony.

88 **Q. In its order in Docket No. 10-0570, the Commission directed that "in ComEd's next**
89 **reconciliation filing it should show how its current incentive compensation relates to**

90 **EE or how it has tailored its incentive compensation for these employees.” 2011 –**
91 **2013 Plan Order at 44. Although this order does not apply to this docket, how is it**
92 **that ComEd’s incentive compensation is already in compliance with the order’s**
93 **directives?**

94 A. The Commission requested that ComEd show that incentive compensation is related to
95 EE or that ComEd has tailored incentive compensation for EE employees. Although
96 ComEd need only make one of these two showings, I explained in my rebuttal testimony
97 that ComEd’s AIP is both related to EE and tailored to EE employees. Fruehe Reb.,
98 ComEd Ex. 4.0, 5:97-6:113, 6:122-29.

99 **Q. How has ComEd shown that its current incentive compensation relates to EE?**

100 A. The AIP has a number of Funding Key Performance Indicators (“KPI”), one of which is
101 the Focused Initiatives & Environmental Index. The Focused Initiatives &
102 Environmental Index includes a measure of energy efficiency savings achieved through
103 ComEd’s energy efficiency programs offered pursuant to Section 8-103 of the Act. The
104 incremental EE employees are vital and necessary to achieving energy efficiency savings
105 under Section 8-103, and their performance is directly tied to achievement of the KPI
106 described above.

107 To the extent Mr. Tolsdorf suggests that ComEd must develop an entirely separate
108 AIP that applies only to EE employees, I strongly disagree with such a suggestion. The
109 Commission has never required that separate AIPs be developed for each department
110 within ComEd, and for good reason. Such an approach would fracture continuity among
111 departments rather than ensure, as the current AIP does, that all ComEd employees
112 together contribute to the success of the company as a whole. Moreover, developing and

113 administering what could be dozens of separate AIPs is simply unworkable and likely at
114 great expense.

115 **Q. How is ComEd's AIP tailored to EE employees?**

116 A. Each employee's AIP is subject to an individual multiplier, which is based upon how
117 well an employee meets his or her goals in a particular year. For example, if an
118 employee fails to meet all of his or her individual goals, the individual multiplier for that
119 employee will be something less than one, thus resulting in a lower amount of
120 compensation under the AIP. In other words, if an EE employee fails to meet his or her
121 goals (which are directly related to achieving ComEd's overall energy efficiency goals),
122 his or her compensation under the AIP will be lower than 100%.

123 **Q. In his rebuttal testimony, Mr. Tolsdorf suggests that there are no customer benefits
124 related to incentive compensation. Do you agree?**

125 A. No, I do not. The incremental employees ComEd has hired to implement its energy
126 efficiency plan (and whose cost are recovered through Rider EDA) provide the benefits
127 identified by the General Assembly in Section 8-103 of the Act: "Requiring investment
128 in cost-effective energy efficiency and demand-response measures will reduce direct and
129 indirect costs to consumers by decreasing environmental impacts and by avoiding or
130 delaying the need for new generation, transmission, and distribution infrastructure." 220
131 ILCS 5/8-103(a). These savings, as well as the energy savings achieved under subsection
132 (b) of Section 8-103 of the Act, are effected in part by the employees, including the
133 incremental employees, who implement the energy efficiency plan, and who are
134 compensated to do so.

135 Moreover, as ComEd has reported in each of its annual reports under Rider EDA,
136 ComEd estimates that it exceeded the energy savings goals for each year under budget.
137 See Brandt Dir., ComEd Ex. 2.0 (ICC Docket No. 09-0378); Brandt Dir., ComEd Ex. 2.0
138 (ICC Docket No. 10-0537); Brandt Dir., ComEd Ex. 2.0 REV. (ICC Docket No. 11-
139 0646).

140 **Q. How do you respond to Mr. Tolsdorf’s argument that EE employees are not**
141 **providing anything more than what Section 8-103 of the Act requires and therefore**
142 **are not entitled to incentive compensation, which he claims is “extra”**
143 **compensation?**

144 A. Putting aside the fact that ComEd’s EE employees are exceeding the statute’s
145 expectations and goals, let me clarify that incentive compensation is not “extra”
146 compensation, but rather a part of the employee’s total compensation package. The AIP,
147 similar to paid vacation and certain healthcare benefits, is a standard component of
148 compensation offered to all ComEd employees, and is necessary for ComEd to remain
149 competitive in the labor market with other utilities to attract qualified employees.

150 As the AIP expressly states, the compensation at issue here is “an important part of
151 [the] overall compensation package.” See Fruehe Reb., ComEd Ex. 4.1 at CEE 0000658.
152 The compensation is not a bonus (the false premise upon which Mr. Tolsdorf relies), but
153 rather a part of the employee’s total compensation that is “at risk”. *Id.* For example, if
154 an EE employee fails to achieve his or her individual goals, he or she would receive less
155 than the total annual compensation expected for the year.

156 **Q. Does this complete your surrebuttal testimony?**

157 A. Yes.